

## HEARING DECISION

Petitioner:

Petitioner's Address:

Petitioner's Parents:

Respondent:

Litchfield Elementary School District  
553 Plaza Circle  
Litchfield Park, AZ 85340

Respondent's Representative:

Karla Gable, Assistant Superintendent  
Litchfield Elementary School District

Petitioner ' s Representative:

Impartial Hearing Officer:

Harold J. Merkow  
333 W. El Camino Drive  
Phoenix, AZ 85021

Dates of Hearing:

May 15, 2001

Date of Decision:

May 24, 2001

## IDENTITY KEY

Respondent School District = Litchfield Elementary School District

Petitioner =

Petitioner ' s parents =

Petitioner ' s mother =

Assistant Superintendent = Karla Gable

District Elementary School = Palm Valley Elementary School

District Middle School = Western Sky Middle School

Special Education Teacher = Kirsten Barnett

Principal = Dr. Ann Allison

prior special education teacher = Beth Sooter

This matter came on for hearing on May 15, 2001. The purpose of the hearing was to consider the due process hearing request of Petitioner's parents proposing to change Petitioner's placement to a self-contained special education classroom from resource provided special education services. Petitioner's parents appeared in person and represented Petitioner as well as themselves. Respondent school district appeared through its Assistant Superintendent who represented the Respondent School District.

Petitioner's parents are seeking a due process hearing to require that Petitioner be educated in a self-contained classroom instead of having her special education services provided on a resource basis. Having heard testimony of the witnesses, having read and considered the exhibits admitted into evidence and being fully advised in the premises, the undersigned hearing officer now makes the following findings of fact and conclusions of law and enters the following decision.

### *FINDINGS OF FACT*

1. Petitioner is a 7<sup>th</sup> grade girl who attends the District Middle School in the Respondent school district for the 2000-2001 school year. Petitioner also attended the same middle school for the 6<sup>th</sup> grade during the 1999-00 school year and before that, Petitioner attended 4<sup>th</sup> and 5<sup>th</sup> grade at the District Elementary School in the Respondent school district.

2. Petitioner is entitled to receive special education services from the Respondent school district based on a specific learning disability classification.

3. In all of the four years that Petitioner has attended school in the Respondent school district, Petitioner has been received special education services in a resource setting where math, written expression and reading are taught in the special education classroom and where a special education aide assists Petitioner in other academic areas in the regular classrooms.

4. Prior to enrolling in the Respondent school district in 1997, Petitioner attended elementary school in another school district in Arizona where she received special education services in a self-contained classroom.

5. While Petitioner was a 6<sup>th</sup> grade student, her parents made a request for a change of placement to a self-contained special education class and, after the Respondent school district denied that request, Petitioner's parents sought mediation. Mediation was unsuccessful. Petitioner's parents did not request a due process hearing.

6. The most recent IEP was developed for Petitioner in October 2000. The IEP continued the goals established in earlier IEPs to address Petitioner's learning disability needs in math, reading and written expression and the IEP intended to continue providing special education services in a resource setting. Petitioner's mother refused to sign the IEP. The IEP was implemented without Petitioner's mother's signature and special education services continued to be provided on a

resource basis.

7. On April 9, 2001, Petitioner's mother submitted a request for a due process hearing. In her request, she indicated "Attempted mediation 4/00 - not successful! Child is on 3<sup>rd</sup> grade level, but teacher has her on 7<sup>th</sup> grade - material & H.W. not accommodating IEP (goals & objectives) Received lunch detention for not finishing homework. Not receiving any help regarding special education". As a requested resolution for this request, Petitioner's mother indicated "Want help for child!"

8. Petitioner's progress in the 7<sup>th</sup> grade during the 2000-2001 school year has been noted as above average. As of May 7, 2001, her midterm progress report shows grades of B-, A+, B+, B-, A, B and B. She is also receiving a passing grade in her one pass/fail class.

9. A due process hearing was set for May 15, 2001 at which time Petitioner's parents and the Respondent school district appeared.

10. At the due process hearing, Petitioner's mother stated that she, her husband and their high school daughter did all of Petitioner's homework for her and that Petitioner was assigned a difficult project to write essays for the Bill of Rights, all of which required long hours and extensive help by the parents. Petitioner's mother indicated that Petitioner must stay awake late into the evening doing homework which she does not understand and that, on one occasion, Petitioner was assigned to lunch detention because she failed to turn in her homework but the detention was not reported to her as she had earlier requested from the Principal.

11. At the due process hearing, Petitioner's social studies teacher stated that Petitioner is a "normal kid" who is "doing fine" in his class and is presently earning an A in his class.

12. At the due process hearing, Petitioner's science teacher stated that Petitioner is presently earning a "B" in his class, which grade is based on class activities, tests and worksheets.

13. At the due process hearing, Petitioner's special education teacher stated that Petitioner is "very capable", that Petitioner is earning "A" and "B" grades in math, reading and language, that Petitioner does well on tests, that she is often ahead of the other students and that the majority of work is done in class with very little homework assigned to the students. She also testified that, when she was informed by Petitioner's mother about Petitioner's difficulty with the Bill of Rights essays, she spoke with the social studies teacher who agreed to reduce the writing requirements for Petitioner so long as Petitioner could demonstrate an understanding of each constitutional amendment.

14. At the due process hearing, evidence was adduced to show that, in developing Petitioner's IEP, Petitioner's goals were tied to the State standards for academic achievement and, if Petitioner is placed in a self-contained classroom, those standards would be decreased.

15. At the due process hearing, the Principal stated that her observations of Petitioner over the past two years has been that Petitioner has made a good

adjustment, she has acquired friends, she stays focused, she does not require too much assistance with her work, she gets good grades and that she has not had any behavior referrals.

16. At the due process hearing, evidence was adduced to show that Petitioner's mother has been unhappy with the Respondent school district for a long time, that she has requested an outside evaluation of Petitioner and that she refused to consent to the school psychologist evaluating her for the triennial evaluation. Petitioner's mother also testified that Petitioner will tell adults what they want to hear, regardless of her true feelings or opinions.

17. Petitioner did not testify at the due process hearing.

### *CONCLUSIONS OF LAW*

1. Petitioner is entitled to a free, appropriate public education within the least restrictive environment.

2. All due process rights to which Petitioner and her parents are entitled have been provided.

3. All notice requirements to which Petitioner and her parents are entitled have been provided by the Respondent school district.

4. Petitioner is entitled to receive special education services based on a handicapping condition of a specific learning disability.

5. Petitioner is entitled to a free, appropriate public education in the least restrictive environment and is entitled to receive an education in the most appropriate educational environment.

6. Based on the evidence presented at this hearing, Petitioner is making good progress towards achieving her special education goals and objectives in a placement that offers resource special education services. Furthermore, based on the evidence presented at this hearing, special education services provided through resource participation is the least restrictive and the most appropriate educational environment for Petitioner.

7. A self-contained special education classroom is not the least restrictive educational environment in which Petitioner should be educated based on the evidence showing her current educational achievement, the absence of behavioral problems at school, the evidence showing her progress towards meeting her IEP goals and objectives and the evidence showing her capability of receiving special education within a resource educational environment.

8. Based on all of the evidence presented at this hearing, Petitioner's placement in a self-contained special education classroom at Respondent middle school would be a denial of Petitioner's right to a free, appropriate public education in the least restrictive environment.

9. The least restrictive and most appropriate educational environment for Petitioner at this time is a resource-based special education program that permits



Petitioner to attend and participate in regular classes, with a variety of teachers and in the company of non-disabled peers.

10. The request by Petitioner's parents to change Petitioner's placement to a self-contained on-campus classroom is not supported by a greater weight of the evidence.

11. Respondent school district is the prevailing party in this matter.

### *HEARING OFFICER'S DECISION AND ORDERS*

It is the decision of the undersigned hearing officer that the due process request of Petitioner's parents is DENIED.

Full inclusion is both the preferred and the legally mandated school placement under IDEA unless evidence is presented to show that significant barriers exist to interfere with the student's ability to progress towards achieving his/her special education goals and objectives. The degree of difficulty in attaining ones progress towards achieving goals and objectives is but one factor that must be apportioned against many other elements when deciding a special education student's appropriate placement.

In this case, evidence exists that Petitioner endures lengthy periods of homework time and that she may take longer to assimilate concepts that are presented in a variety of academic areas. The evidence also shows that,

notwithstanding those difficulties, she is attaining above-average grades and that she is progressing toward achieving her special education goals. Indeed, beyond consideration of Petitioner's academic progress, evidence was presented to show that Petitioner is well adjusted, she had friends in school, she is participatory in class and she is self-confident. Evidence from her teachers further indicates that Petitioner herself thinks that she is doing well in the current environment!

Petitioner's parents point to Petitioner's self-contained special education classroom while she was a 2<sup>nd</sup> and 3<sup>rd</sup> grader in a prior school district as evidence that the current program using resource classes and resource assistance in regular classes is inappropriate. However, historical comparisons are inapposite to any conclusion about present placement. Petitioner's inclusion candidacy was fixed at the time of her enrollment in the 4<sup>th</sup> grade in the Respondent school district and, if Petitioner's parents felt the need to challenge that candidacy, such a challenge should have been launched then. Instead, for the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> grades in the Respondent school district, Petitioner has functioned in a resource setting and each year she has "progressed significantly" to advance in grade. The most fundamental demonstration of Petitioner's success was her transition from elementary school to middle school which required moving from class to class, having multiple teachers and learning in a new environment. The testimony of her prior special education teacher showing how Petitioner acquired new self confidence, learned new concepts and cultivated new friends while attending a new and unfamiliar school all shows

how she “flourishes” in the resource environment. Now, more than three years after her enrollment in the Respondent school district, after a vivid demonstration of Petitioner’s capabilities to function in the resource environment, there is far less compelling evidence to reverse the decision to offer special education services in the resource environment.

The seeming dichotomy between Petitioner’s parents’ observations about Petitioner’s struggles and the school personnel’s explanations about Petitioner’s successes are not that dissimilar. One expects that the transition years of middle school will present complications that did not exist in earlier years and one would further expect that the academic challenges would be increasingly arduous. If one factors in the normal teenage development of middle school students, a complex macrocosm presents in the seventh grade that was absent in the sixth and earlier grades. If one overlays the school’s expectations that seventh and eighth graders must develop skills that will be needed in high school and beyond, the matrix, framework and surroundings in which Petitioner functions is far different than the environment of her earlier elementary school years.

There are overarching reasons not to stifle Petitioner’s ability to be as unrestricted as possible. Petitioner is transitioning into environments where life skills will predominate. Petitioner will need survival skills to cope, she will need to interact with non-disabled peers on a regular basis and she will need a measure of confidence in her ability to contend with challenges. Developing Petitioner’s

education program around those life skills will enhance her ability to be a productive adult. Restricting Petitioner's education program in order to reduce the amount of her homework is contraindicated.

Despite Petitioner's mother's description of Petitioner's fear of adults and Petitioner's desire to please adults regardless of her true feelings, there is no evidence in the record of this matter to show that Petitioner's progress is artificial or that the grades assigned by the teachers are counterfeit. Petitioner has been described as a "normal kid" whose progress is "exemplary" and whose adjustment to her current environment is well expressed by her teachers. Indeed, Petitioner's special education teacher illustrated how Petitioner seeks new challenges to learn materials, how she works ahead of her classmates and how inquisitive she is about concepts being taught to non-disabled peers. Disturbing Petitioner's placement at this time, despite Petitioner's parent's disquietude about the Respondent school district, does not seem to be justified in Petitioner's best interests. In fact, the descriptions between resource classes and a self-contained classroom militate against any change of placement. As described by the Principal, a one-room, one-teacher environment removes Petitioner from the mainstream which prevents her from growing socially and intellectually and which would "cripple" her.

In light of Petitioner's rapport with her teachers, in light of her academic progress and in light of the absence of any behavioral problems, there is no reason to isolate Petitioner from other students at the Respondent middle school. Even

though Petitioner may be anxious at home about completing her homework and, despite the evidence of one lunch detention for not completing her homework, there are many opportunities to adapt Petitioner's school schedule to alleviate her anxiety about homework (as has already been demonstrated by the accommodations provided to Petitioner with the Bill of Rights assignment) without resorting to placement in a self-contained classroom.

Consideration for placement in a self-contained program requires more than a simple balancing test; discrete, objective evidence must exist to show a student's *inability* to function in a less restrictive environment. No such evidence exists in this matter and, in fact, the greater weight of evidence demonstrates the appropriateness of Petitioner's current placement. The totality of evidence confirms that the Respondent school district is providing a free, appropriate public education by offering special education services to Petitioner through resource classes and resource assistance in regular classes. Accordingly, the due process request to change Petitioner's placement to a self-contained special education classroom is denied.

### *APPEAL RIGHTS*

THIS DECISION IS A FINAL DECISION. Any party aggrieved by this decision may file an appeal with the Arizona Department of Education, Exceptional Student

Division, 1535 West Jefferson, Phoenix, Arizona, within thirty-five (35) days following your receipt of this decision.

DATED this 24<sup>th</sup> day of May 2001.

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HAROLD J. MERKOW  
Due Process Hearing Officer